



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
DIRECTIVE**

**DIRECTIVE NUMBER
208**

**DISTRIBUTION DATE
February 7, 2005**

1. **SUBJECT: AMENDING COMPLAINTS**
2. **PURPOSE:** To set forth the procedures for determining when a complaint is to be amended and to describe the procedures for amending complaints.
3. **BACKGROUND:** On occasion, it may be necessary to amend complaints that have already been signed by the complainant and served on the respondent or to amend a complaint that has already been closed by the Department of Fair Employment and Housing (DFEH). The following procedures explain how such requests should be handled.
4. **PROCEDURES:**
 - A. **Decisions on Amending Complaints:**

In that an amendment to a complaint affects the complainant's legal rights, consultants and district administrators should always exercise care in making these decisions. Questions should be addressed to the assigned attorney as necessary.
 - B. **Amending Complaints on Open Cases:**

The following are examples of instances when amending a complaint on an open case is appropriate:

 - 1) To add bases or allegations that are within the one year statute for filing;
 - 2) To change the facts or the wording of a complaint; or
 - 3) To correct the name of the respondent.

C. Amending Open Complaints Beyond the One Year Period From the Act of Harm:

- 1) A complaint may be amended after the expiration of the one year date of harm. It is the Department's position that these amendments are appropriate under the following circumstances:
 - a) To add new bases, respondents or complainants. However, this can be done only in instances where the proposed amendment(s) either relate back to the same operational facts set forth in the original complaint or the original complaint contained specific language that references or identifies bases, respondents or complainants that are to be amended into the complaint. It is not appropriate to amend complaints to add allegations that relate to a set of facts that are different from those set forth in the original complaint. For a complete discussion of this subject matter, refer to the "Jurisdiction" section of the Case Analysis Manual; or
 - b) To add an act of retaliation that is beyond the one year statute of limitations for filing, but only in specific instances. (Refer to Directive 209, "Retaliation Complaints," for guidance.)
- 2) Complainants requesting to amend complaints to add allegations which are beyond one year and relate to a set of facts that are different from those set forth in the original complaint should be offered the opportunity to file a "b" or "c" complaint.

D. Amending Complaints on Closed Cases:

On occasion, complainants or their attorneys may request to amend a complaint on a closed case. The Department will usually accept any amendments a complainant or his/her attorney wishes to file. This should be done with the following considerations:

- 1) Closed cases may be amended to add, change or correct the text, correct the name of the respondent or add additional respondents. When an amendment is filed, the closed case will not be reopened. In that the case has already been closed, an administrative determination on the validity of the amended complaint will not be made.
- 2) In addition, when an amendment to a closed case is accepted, the Department makes no administrative determination on the retroactivity of the amended complaint and the amendment has no effect on the originally issued right-to-sue letter by the Department. The original right-to-sue remains in effect, as does the original statute of limitations for filing a private lawsuit.

- 3) When a complaint on a closed investigated case, complaint taken for filing purposes only ("b" complaint), or where complainant requests an immediate right-to-sue ("c" complaint) when the complainant is **not** represented by counsel is being amended to add, change or correct the text or to correct the respondent, the amended complaint will be served using the "Notice of Filing of an Amended Closed Discrimination Complaint" (DFEH 200-50).
- 4) When a complaint on a closed "c" case where the complainant **is** represented by counsel is amended, the amended complaint will be served using "Notice of Filing of Amended Closed Discrimination Complaint" (DFEH 200-50a).
- 5) In that a closing letter has already been issued in the case, a new closing letter will not be sent.

E. Accepting A Separate Complaint:

It would be appropriate to accept a new complaint instead of amending the original complaint in the following instances:

- 1) When a co-respondent is to be added to a case. (Refer to the instructions in section 4.D.1) of Directive 207, "Acceptance of Complaints Involving Co-Respondents or Parties Other Than the Primary Respondent;" or
- 2) When an initial complaint has been taken in which the complainant alleges any additional acts of harm and the harm occurred within one year of filing, a separate complaint should be taken.

F. Correcting a Complaint Instead of Amending:

It is not necessary to amend a complaint to make minor changes (e.g., instance of a wrong case number, an incorrect address for the respondent, misspelled words, etc.). Instead, the original complaint may be "corrected" to make such minor changes. (Refer to the Enforcement Division's Clerical Case Processing Manual for instructions on "correcting" complaints.)

5. APPROVAL:

Suzanne M. Ambrose, Director

Date